IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1399 of 2002

with

Civil Application No. 7121 of 2002

and

Civil Application No. 5616 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GENERAL MANAGER,AHMEDABAD TELECOM DISTRICT

Versus

GOVINDBHAI CHIKABHAI SOLANKI

Appearance:

MS PAURAMI B SHETH for appellant No. 1

MR PJ MEHTA for Respondent No. 1-5

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 11/12/2002

ORAL JUDGEMENT

1. This appeal which is filed under Section 30 of Workmen's Compensation Act, 1923 ('the Act' for short) is directed against the judgment and award dated 30.9.2001 rendered in Workman Compensation Application No.119 of 1987 by the Commissioner appointed under the Act by which application filed by respondents herein/original claimants against appellant for getting compensation of Rs.56,800/- on account of the accidental death of Khodabhai Govindbhai Solanki who died while he was in service of the appellant, came to be allowed and thereby the appellant was directed to pay Rs.56,800/- by way of compensation together with penalty of Rs.28,400/- and also interest at the rate of 6% on the amount of compensation of Rs.56,800/- from the date of death i.e., February 6, 1987 till the date on which the award was declared and also cost of RS.1,000/-

2. The respondents are the heirs and legal representatives of deceased Khodabhai Govindbhai Solanki who have filed Workman Compensation Application No.119 of 1987 before the Commissioner for Workmen's Compensation, Ahmedabad, inter alia alleging that the deceased Khodabhai was serving as a casual labourer with the General Manager, Ahmedabad Telecom District, Ahmedabad since four years prior to the accident which has resulted into his death. He was getting Rs.650/- per month by way of salary. He was aged about 24 years when he died on account of the accident took place dated 27.1.1987 at 1 P.M. while he was on duty. After the accident, injured Khodabhai was taken to hospital but ultimately he succumbed to the injuries on 6.2.1987. It was also alleged that since deceased Khodabhai has died as a result of the accident that took place during the course of his employment with the appellant, the respondents being the heirs and legal representatives of deceased Khodabhai are entitled to receive compensation under the Act and, therefore, notice dated 13.8.1987 came to be served upon the appellant claiming compensation of Rs.56,800/- However, the appellant did not accede to the said request and therefore the respondents were constrained to file the application before the Commissioner for Workmen's Compensation, Ahmedabad wherein they claimed compensation of Rs.56,800/- together with penalty, interest and cost under the Act.

3. The appellant contested the application by filing reply at Ex.11 wherein inter alia he denied all the allegations made in the application. It was also contended that the respondents have not made GEB, Ahmedabad and builder of Chandragupta apartment as party respondents. It was further contended that the application was bad for nonjoinder of parties. It was denied that the deceased was earning RS.650/- per month. However it was admitted that the deceased was working as a daily wager and was getting Rs.13.60 per day. Lastly it was prayed to dismiss the application filed by the respondents.

4. The learned Commissioner for Workmen's Compensation, Ahmedabad, after recording oral evidence and considering the documents, came to the conclusion that the deceased was a "workman" within the definition of Section 2 (1) (n) of the Act. Since the deceased has died during the course of employment and his last pay was Rs.650/- per month, the learned Commissioner calculated compensation as envisaged under section 4 1 (a) of the Act at 40% and penalty in view of the provisions of section 4-A of the Act and awarded compensation of Rs.56,800/- and penalty of Rs.28,400/- and also interest on Rs.56,800/- at the rate of 6% from the date of death i.e., 6.2.1987 till the award was passed and also awarded Rs.1,000/- by way of cost in favour of the respondents. It is this finding, ultimate conclusion and resultant award that is on the anvil of scrutiny before me in this appeal at the instance of the appellant/original opponent - General Manager, Ahmedabad Telecom District, Ahmedabad.

5. Ms. Paurami Sheth, learned advocate for the appellant, contended that the employer is liable of pay compensation under Section 3 of the Act only if the personal injuries are caused to the workman by accident arising out of and in the course of employment. According to her, the respondents are not entitled to any compensation under the Act because as per their own say at the relevant time the deceased was working as casual labourer and the provisions of the Act was not applicable to casual labourers. According to her, as causal labourer is specifically excluded from the definition of "workman" mentioned in Section 2 (1) (n) of the Act, the respondents are not entitled to get any compensation. It is also asserted by her that when the deceased was not a workman as defined under Section 2 (1)(n) of the Act, the appellant was not required to deposit the amount on receipt of the notice as per the provisions of Section 4 (1)(a) of the Act nor he was liable of pay penalty as provided in section 4-A of the Act for not depositing the

amount of compensation within stipulated time. According to her, the learned Commissioner has lost sight of these aspects and thereby erred in directing the appellant to pay the amount and this being a law point, it can be raised at any time. It is also stressed by her that the amendment in section 2 (1) (n) of the Act came into force in the year 2000 vide Amendment Act No.46 of 2000 by which casual labourers are now included in the definition of "workman". According to her, in the present case the accident took place on 27.1.1987 and the deceased had died on 6.2.1987 and admittedly at that time the deceased was not a workman within the definition of Section 2 (1) (n) of the Act as he was working as a casual labourer and subsequently vide Amendment Act No.46 of 2000 casual labourer also came to be included in the definition of "workman" as defined under Section 2 (1) (n) of the Act. It it contended by her that it is well settled law that the Act which is applicable on the date of the accident giving rise to the cause of action is required to be looked into and not the date on which the award is passed by the court and in that view of the matter, the Amendment Act is not made applicable to the present case. In the alternative she has also submitted that the learned Commissioner ought not have awarded Rs.56,800/- together with penalty and interest as there was no documentary evidence produced by the respondents to show that the income of the deceased was Rs.650/- per month. It is stressed by her that admittedly the deceased was working as a clausal labourer and in fact he was earning RS.13.60 per day and in that view of the matter the learned Commissioner ought to have awarded not more than RS.50,000/- which is the minimum amount under Section 4 (1) (a) of the Act. She further contended that the learned Commissioner ought not have awarded penalty and interest as the appellant was not required to pay compensation to a causal labourer and hence cannot be said of be in default. She, therefore, urged to quash and set aside the impugned judgment and award and thereby to allow the appeal. She, therefore, prayed to allow the appeal.

6. Mr. P.J. Mehta, learned advocate for the respondents/claimants vehemently contended that in view of the provisions contained in Chapter V - A of the Industrial Disputes Act, 1947, casual labourers who have completed 240 days in a calender year are entitled to get all the statutory benefits available under the labour laws. It is pointed out by him that it is true that the respondents/claimants have mentioned in the application that the deceased was a causal labourer but in fact he was not a causal labourer as he had completed service of

4 years and, therefore, he was a regular employee as defined in section 2 (1) (n) of the Act. The learned Commissioner has very rightly considered this aspect and awarded compensation to the respondents who have lost their sole bread winner in the accident that took place while he was in service. According to Mr. Mehta, the learned Commissioner has committed no error either on facts or in law and therefore the impugned judgment and award requires no interference in this appeal which is filed under section 30 of the Act in which the jurisdictional sweep is very limited and is confined to considering the substantial question of law only and in the instant case there is no substantial question of law. So far as the determination of compensation on the basis of salary at Rs.650/- per month is concerned, it is a question of fact which cannot be reopened in this appeal which is filed under section 30 of he Act. It is also asserted by him that the appellant has not produced any document to support his say that the deceased was earning Rs. 13.60 ps. per day. If in fact the deceased was getting only Rs.13.60 per day, as the records pertaining to the wages paid to the deceased are lying with the appellant, he should have produced the same but the appellant has not produced the same and, therefore, there is a presumption that the deceased was getting Rs.650/per month as averred by the respondents in the application. On the aforesaid premises he urged to dismiss the appeal.

7. I have given my considered thought to the rival submissions made by the respective learned advocates appearing for the parties. I have also gone through the averments made in the memo of appeal, grounds set out therein, the impugned judgment and award and the statutory provisions contained in the Act.

8. At the outset, be it stated that there is no dispute that the deceased was working as a casual labourer with General Manger, Ahmedabad Telecom District, Ahmedabad at the relevant time. To prove the question of income of the deceased, oral evidence on behalf of the respondents' side has been tendered. According to the appellant, the deceased was getting RS.13.60 ps. per day but to substantiate this averment made in the written statement on behalf of the appellant no documentary evidence was produced. If the deceased was getting only Rs.13.60 per day the appellant ought to have produced documentary evidence to that effect as the records are lying with them with regard to the payment made to the deceased. Since no such document was produced by the appellant, the learned Commissioner has very rightly considered the income of the deceased at Rs.650/- per

month.

9. The contention that the deceased was not a workman within the definition of Section 2 (1) (n) of the Act also, in my view, has no substance. It is an admitted position that the deceased was working with the appellant since four years prior to his death. In view of Chapter V A of the Industrial Disputes Act, a workman who has completed 240 days in a calendar year is entitled to all statutory benefits envisaged under the industrial laws. The Act is a socially benevolent piece of legislation which is enacted in favour of the employees with a laudable object to award compensation to the injured employees or heirs and legal representatives of the deceased employees who have died in an accident while they are in service of employer. Its provisions are to be construed liberally and in favour of the employees. It is true that the Amendment Act came into being vide Act No.46 of 2000 and by virtue of this Amendment Act casual labourers have been now included within the definition of Section 2 (1) (n) of the Act, meaning thereby now all types of workmen, including causal labourers, are included within the definition of Section 2 (1) (n) of the Act. It is true that the accident had taken place on 27.1.1987 and the injured had died on 6.2.1987 and therefore at the relevant time the deceased was not included in the definition of workman described under section 2 (1) (n) of the Act. However, the Act being socially benevolent piece of legislation its provisions are to be construed in favour of the deceased workman and therefore the learned Commissioner has rightly awarded compensation in favour of the respondents on account of the death of deceased Khodabhai.

10. So far as the determination of compensation on the basis of the income of deceased Khodabhai is concerned, as per the averments made in the application, the deceased was earning Rs.650/- per month and the learned Commissioner has rightly awarded Rs.56,800/- on the basis of the calculation envisaged under section 4 (1) (a) of the Act.

11. So far as the penalty under section 4-A of the Act is concerned, according to me, the learned Commissioner has committed error in awarding the same. It is an admitted position that at the relevant time as per the definition of section 2 (1) (n) of the Act, casual labourers were not included within the definition of "workman" and therefore the appellant was justified in not depositing the amount of compensation as claimed in the notice under the bonafide belief. Therefore, the

Commissioner ought not have awarded penalty against the appellant. In that view of the matter, the award qua awarding penalty is deserved to be quashed and set aside.

12. So far as interest aspect is concerned, the learned Commissioner has awarded 6% interest on the principal amount of RS.56,800/- and therefore I do not deem it expedient to interfere with that finding as it is reasonable and cannot be termed as excessive.

13. On over all view of the matter, I am of the opinion that there is no error either in law or on facts committed by the learned Commissioner except to the extent of imposing penalty of Rs.28,400/- which is required to be quashed and set aside by allowing this appeal in part.

14. For the foregoing reasons, the appeal succeeds in part only qua the imposition of penalty against the appellant and accordingly it is partly allowed with no order as to costs. Now, the respondents are held entitled to get compensation of RS.56,800/- together with interest at the rate of 6% on the amount of RS.56,800/from the date of death i.e., 6.2.1987 till the amount is deposited before the learned Commissioner. So far as the amount of penalty of Rs.28,400/- is concerned, the respondents are held not entitled to receive the said and hence the impugned judgment and award is quashed and set aside to that extent only.

15. Ms. Sheth, learned advocate for the appellant, states that pursuant to the order of this Court, the appellant has deposited an amount of Rs.1,36,116/-, which includes penalty of Rs.28,400/- also, on 26.12.2001, before the learned Commissioner for Workmen's Compensation. She, therefore, urged that since this Court has quashed the order qua imposition of penalty of Rs.28,400/-, the learned Commissioner for Workmen's Compensation may be directed to refund the said amount to the appellant and necessary order in this regard may be passed. In view of the aforesaid state of affairs, the learned Commissioner for Workmen's Compensation is directed to refund to the appellant an amount of Rs.28,400/- from the amount of Rs.1,36,116/- deposited by him in view of the fact that this Court has quashed and set aside the impugned judgment and award to the extent of awarding penalty of Rs.28,400/- to the respondents/claimants. After refunding the amount of Rs.28,400/- to the appellant from the amount of Rs.1,36,116/- deposited by him, the learned Commissioner for Workmen's Compensation shall pay the remaining amount

to the respondents/claimants forthwith on due verification.

16. Registry is directed to send the writ of this judgment to the learned Commissioner for Workmen's Compensation forthwith.

17. In view of the fact that the appeal is partly allowed, both the above mentioned civil applications do not assume any survival value now and therefore they are disposed of accordingly with no order as of costs.

18. Direct service as requested by Mr. P.J. Mehta, learned advocate for the respondents/claimants is permitted.

(A. M. Kapadia, J.)

(karan)